

DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT: HEMPSTEAD: L&T PART

_____ X
§ [REDACTED],
Petitioner(s),
v.
§ [REDACTED] et al.,
Respondent(s).
_____ X

Index No: LT-[REDACTED]/NA
Hon. Veronica Renta Irwin

- Papers Considered:
·Petitioner's Notice of Motion, Affidavits,
Affirmations and Exhibits in Support
·Respondents' Affirmation in Opposition
·Petitioner's Reply Affirmation

DECISION ON MOTION

This matter comes before the Court via an Amended Holdover Petition filed on December 17, 2025, alleging that Title to the property located at [REDACTED] (The Premises") was transferred to Petitioner by Deed dated and recorded on December 19, 2024. Petitioner claims that a 10-day Notice to Quit was served on October 1, 2025. Petitioner alleges that Respondents remain in possession of The Premises.

Petitioner filed a Motion for Summary Judgment requesting an Order granting summary judgment in favor of Petitioner. Petitioner states that "Following Petitioner's acquisition of title, it served Respondents with a ten-day notice to quit dated September 25, 2025, with a certified copy of its deed." Petitioner argues that Respondents "failed to surrender possession of The Premises upon expiration of the ten-day notice period on October 13, 2025, and continue to wrongfully hold over in unlawful possession of The Premises."

Petitioner argues that this matter was properly brought pursuant to RPAPL §713(5) as this involves property that has been sold in foreclosure. Petitioner avers that the Deed was exhibited to Respondents in accordance with RPAPL §713(5) and that Respondents failed to quit and surrender possession after proper notice.

In Opposition, Respondents argue that Petitioner's motion for summary judgment must be denied as "material issues of fact and law exist concerning standing, the applicability of RPAPL § 713(5), party status, and possession."

Specifically, Respondents allege that Respondent [REDACTED] [REDACTED] [REDACTED] was the record owner of the premises, and that Respondent [REDACTED] was the sole member of [REDACTED] [REDACTED]. After a default on the mortgage, Respondent claims that Petitioner conducted a UCC Article 9 sale, without Respondent [REDACTED]'s knowledge or consent, and acquired ownership of The Premises.

Respondent argues that since this Deed was acquired after a UCC Article 9 sale, and not after a judicial foreclosure, that an action pursuant to RPAPL §713(5) is improper and must be dismissed.

In Reply, Petitioner argues that summary judgment should be granted, and that this action is properly brought.

ANALYSIS

A motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the

court as a matter of law in directing judgment in favor of any party" (CPLR 3212 [b]). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by presenting evidence, in admissible form, demonstrating the absence of any material issues of fact (see e.g. Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; Zuckerman v City of New York, 49 NY2d 557, 562 [1980]).

In this case, Petitioner moves pursuant to CPLR §3212 which states:

(a) Time; kind of action. **Any party may move for summary judgment in any action, after issue has been joined**; provided however, that the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown.

(Emphasis added)

An issue of law or fact is "joined" whenever it becomes necessary and proper for the court or jury to decide a question of law or a question of fact. Bus. Servs. of Am. II, Inc. v. Wafertech, LLC, 159 Wn. App. 591, 597–98, 245 P.3d 257 (2011) (issue was joined on filing of motion to dismiss). Generally, an issue of law or fact "has been joined" when the defendant files an answer or defense to an allegation or complaint. Polello v. Knapp, 68 Wn. App. 809, 816, 847 P.2d 20 (1993).

By appearing and responding to the petition, issue was joined for purposes of RPAPL Article 7. Trump Village Section 3, Inc. v. Kiselgof, 18 Misc.3d 1106(A), (Civ. Ct. Kings Co. 2007) ("In a holdover proceeding, the time to answer the petition is at the time the petition is to be heard."); New York University v. Farkas, 121 Misc.2d 643, 644 (Civ. Ct. N.Y. Co. 1983) ("The invention of the summary proceeding was designed to provide the landlord with a simple, expeditious and inexpensive means of regaining possession of his premises in cases where the tenant refused upon demand to pay rent, or where he wrongfully held over without permission after the expiration of the term.")

Accordingly, this Court determines that issue has been joined in this matter upon the filing of Petitioner's motion for summary judgment.

RPAPL §713 provides the statutory basis that a special proceeding may be maintained:

A special proceeding may be maintained under this article after a ten-day notice to quit has been served upon the respondent in the manner prescribed in section 735, upon the following grounds:

1. The property has been sold by virtue of an execution against him or a person under whom he claims and a title under the sale has been perfected.
2. He occupies or holds the property under an agreement with the owner to occupy and cultivate it upon shares or for a share of the crops and the time fixed in the agreement for his occupancy has expired.
3. He or the person to whom he has succeeded has intruded into or squatted upon the property without the permission of the person entitled to possession and the occupancy has continued without permission or permission has been revoked and notice of the revocation given to the person to be removed.
4. The property has been sold for unpaid taxes and a tax deed has been executed and delivered to the purchaser and he or any subsequent grantee, distributee or devisee claiming title through such purchaser has complied with all provisions of law precedent to the right to possession and the time of redemption by the former owner or occupant has expired.

5. Subject to the rights and obligations set forth in section thirteen hundred five of this chapter, the property has been sold in foreclosure and either the deed delivered pursuant to such sale, or a copy of such deed, certified as provided in the civil practice law and rules, has been exhibited to him.

6. He is the tenant of a life tenant of the property, holding over and continuing in possession of the property after the termination of the estate of such life tenant without the permission of the person entitled to possession of the property upon termination of the life estate.

7. He is a licensee of the person entitled to possession of the property at the time of the license, and (a) his license has expired, or (b) his license has been revoked by the licensor, or (c) the licensor is no longer entitled to possession of the property; provided, however, that a mortgagee or vendee in possession shall not be deemed to be a licensee within the meaning of this subdivision.

8. The owner of real property, being in possession of all or a part thereof, and having voluntarily conveyed title to the same to a purchaser for value, remains in possession without permission of the purchaser.

9. A vendee under a contract of sale, the performance of which is to be completed within ninety days after its execution, being in possession of all or a part thereof, and having defaulted in the performance of the terms of the contract of sale, remains in possession without permission of the vendor.

10. The person in possession has entered the property or remains in possession by force or unlawful means and he or his predecessor in interest was not in quiet possession for three years before the time of the forcible or unlawful entry or detainer and the petitioner was peaceably in actual possession at the time of the forcible or unlawful entry or in constructive possession at the time of the forcible or unlawful detainer; no notice to quit shall be required in order to maintain a proceeding under this subdivision.

11. The person in possession entered into possession as an incident to employment by petitioner, and the time agreed upon for such possession has expired or, if no such time was agreed upon, the employment has been terminated; no notice to quit shall be required in order to maintain the proceeding under this subdivision.

“As the right to maintain summary proceedings did not exist at common law and is solely a creation of the statute, it applies only in those cases authorized by the statute” (*Dulberg v. Ebenhart*, 68 A.D.2d 323, 328, 417 N.Y.S.2d 71 [1979]).

In the absence of any specific authority under RPAPL Article 713 (proceeding where no landlord-tenant relationship exists), the proceeding may not be maintained.

We note that if a new category of summary proceeding is to be created, it is for the legislature, not the courts, to create it (see Rosenstiel v. Rosenstiel, 20 A.D.2d 71, 245 N.Y.S.2d 395 [1963]).

In this matter, there is no dispute that the underlying Deed in this action was obtained through a UCC Article 9 sale and not through a judicial foreclosure. Thus, RPAPL 713(5) provides no basis for the maintenance of this proceeding


After reviewing all relevant documents and considering all arguments, it is hereby

ORDERED, that Petitioner's motion for Summary Judgment is Denied; and it is further

ORDERED, that the Petition is dismissed.

This constitutes the Decision of the Court.

Dated: February 27, 2026


Veronica Renta Irwin
Nassau County District Court Judge

cc: Attorney for Petitioner(s)/Petitioner(s)
Attorney for Respondent(s)/Respondent(s)